MALAYSIAN REPORTS

RAJAGOPAL v. PUBLIC PROSECUTOR

[F.C. (Gill Ag. L.P., Ong Hock Sim and Raja Azlan Shah F.JJ.) September 18, 1976]
[Kuala Lumpur — Federal Court Criminal Appeal No. 23 of 1975]

Criminal Law and Procedure — Trial by jury — Summing up — Defence of insanity — Burden of proof — Medical evidence.

The appellant appealed against his conviction for murder. The defence relied upon was insanity and on the appeal it was argued *inter alia* (1) that the learned trial judge failed to direct the jury as to the burden which lay on the defence in the case of insanity; (2) that the learned trial judge failed to direct the jury that lack of motive was an important indication of insanity; (3) that the judge had not directed the jury adequately on the relevant facts which they should take into consideration in coming to their decision on the question of insanity; (4) that the learned judge failed to direct the jury that the uncontradicted medical evidence called by the defence on the question of insanity was not challenged in any way by the prosecution.

Held, dismissing the appeal: (1) in this case the learned trial judge had said in effect that if the evidence relating to the conduct of the accused raised in their minds a doubt as to his insanity, the jury should give him the benefit of the doubt. He had therefore placed on the defence a much lighter burden of proof than proof on the balance of probabilities and it could not be said that there was misdirection or non-direction by the judge to the jury on this point:

(2) taking the summing up as a whole the judge had put all the relevant facts clearly before the jury and in particular had stated that although the prosecution did not have to prove motive it was a factor which the jury was entitled to take into account in considering the defence;

(3) the learned trial judge dealt at great length with the medical evidence and told the jury that the question of whether the accused was sane or insane at the time of the commission of the offence was a question which they alone must decide.

Cases referred to:-

(1) *Goh Yoke* v. *P.P.* [1970] 1 M.L.J. 63.
(2) *Sodeman* v. *R.* [1936] 2 All E.R. 1138.
(3) *Chia Chan Bah* v. *The King* [1938] M.L.J. 147.
(4) *Yeo Ah Seng* v. *P.P.* [1967] 1 M.L.J. 231.
(5) *Re James Frank Rivett* (1951) 34 Cr. App. R. 87.

FEDERAL COURT.

M. Mahalingam for the appellant.

Lamin bin H.M. Yunus (Deputy Public Prosecutor) for the respondent.

Gill Ag. L.P. (delivering the judgment of the Court): The appellant was tried before Abdul Hamid J. and a jury for the murder of one Perumal s/o Resavan in contravention of section 302 of the Penal Code. The jury by a majority of 5 to 2 returned a verdict of guilty, with which the judge concurred, whereupon the appellant was convicted and sentenced to death. Against this conviction and sentence he appealed to this court. At the close of the hearing we dismissed the appeal, and now proceed to give our reasons.

At the trial there was very little controversy as to the facts, as the evidence produced by the prosecution in support of the charge was not seriously challenged. On that evidence it was abundantly clear that the deceased died as a result of the numerous stab wounds which were inflicted upon him by the appellant.

The defence relied upon was one of insanity. The appellant made a statement from the dock in which he said that he had nothing to say as he did not know what to say. His mother gave evidence to say that when on the night in question her son returned to the house she saw some blood stains on his shirt, and that when she asked him, "What is this?" he replied, "Nothing Mother". She went on to testify that when he came into the house he was muttering something to himself, after which he started crying and behaved a bit abnormally. The main evidence on the question of insanity was that of Dr. Dato' M. Mahadevan, the consultant psychiatrist, Hospital Bahagia, Tanjong Rambutan.

The appeal before us was argued on eight separate grounds which overlapped one another and were to the effect that the learned trial judge did not direct the jury adequately on the question of insanity. It was contended that the learned trial judge failed to direct the jury as to the nature of the burden which lay on the defence in the case of insanity.

The way in which the jury were directed on the question of insanity was as follows. Having read to them section 84 of the Penal Code which provides that "nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law," the learned judge said that in order that the accused may have the benefit of this exception, he had to prove and they had to satisfy themselves that the accused was suffering from unsoundness of mind at the time when he did the act.

As was stated by this court in *Goh Yoke* v. *Public Prosecutor*,[1] following what was laid down by the Privy Council in *Sodeman* v. *R.*[2] and what the Singapore Court of Criminal Appeal said in *Chia Chan Bah* v. *The King*,[3] the burden on an accused person to prove insanity is no higher than the burden which rests upon a plaintiff or a defendant in civil proceedings. In directing the jury on the quantum of proof on the defence, the learned judge did not state this formula but he ended up his direction to the jury on this point by saying this:

"If the evidence relating to the conduct of the accused which led to this case or if defence evidence raises in your minds a doubt as to whether he was capable of knowing that what he did was wrong or unlawful, you must give him the benefit of the doubt and in that case, he would be entitled to be acquitted on the ground that he was of unsound mind as required by section 84."

It is to be observed that the learned judge in fact placed on the defence a much lighter burden of proof than is contained in the formula to which we have made reference.

In *Goh Yoke's* case[1] it was held that for the normal presumption of sanity to prevail over evidence of insanity adduced by the defence, the evidence as a whole must be sufficient to exclude any reasonable doubt regarding the sanity of an accused person pleading unsoundness of the mind as a defence. In our judgment, what the learned judge finally said to the jury on the question of insanity satisfied this test. We were therefore satisfied that there was no mis-

direction or non-direction by the judge to the jury on this question.

It was next contended for the appellant that the learned judge failed to direct the jury that lack of motive was an important indication of insanity. The case of *Yeo Ah Seng* v. *Public Prosecutor*[4] was cited to us in support of this contention. We could not accept this contention because in the course of his summing-up the learned judge did say to the jury that although the prosecution need not have to prove motive it was a factor which they had to take into account in considering the defence.

It was further contended that the judge should have directed the jury on the relevant facts which they should take into consideration in coming to their decision on the question of insanity. In particular it was said that the learned judge failed to emphasise to the jury that there was no secrecy about the commission of the offence in a lighted area, that after committing the offence the appellant stood under the lamp-post, that he chased the man who tried to intervene and that he offered no resistance when he was arrested. Taking the summing-up as a whole, we were satisfied that all this was clearly put to the jury. We could therefore find no substance in this contention either.

One of the grounds of appeal was that the learned trial judge failed to explain properly to the jury the medical terminology "paranoia schizophrenia". We could find no merit in this ground because the evidence of Dr. Mahadevan was dealt with at great length by the learned judge in his summing-up. The doctor had stated in his evidence the nature of the disease of the mind which the appellant was suffering from and its effect on him. He also expressed the view that a person suffering from such a disease may or may not know the nature of his acts. All this was clearly put to the jury by the learned judge.

The substantial ground of appeal was that the learned judge failed to direct the jury that the uncontradicted medical evidence of Dr. Mahadevan was not challenged in any way by the prosecution on the question of insanity. Here again our attention was drawn to what this court said in *Yeoh Ah Seng's* case, but we could find nothing in the learned judge's summing-up to indicate that he had deprecated the evidence of the medical expert and directed the jury that his views were based on assumptions.

As we have already said, the learned judge in fact dealt at great length in his summing-up with the evidence of Dr. Mahadevan, at the end of which he directed the jury that the doctor was only expressing an opinion which they were not bound to follow as the whole question of whether the accused was sane or insane at the time of the commission of the offence was a question which they alone must decide. In our judgment there was nothing wrong with that part of the learned judge's summing-up.

In this connection we were guided by the decision of the Court of Criminal Appeal in England in the case of *James Frank Rivett*.[5] It was held in that case that the issue is one to be determined by a jury, and not by medical men of whatever eminence; and where a jury has found a prisoner guilty despite strong evidence by medical men of the highest standing that he was insane at the material time, the Court of Criminal Appeal will not interfere with the verdict, unless it is satisfied that no reasonable jury could have found a verdict of guilty in the particular case. The Lord Chief Justice at the conclusion of his judgment of the court said at page 95:

"Let it be assumed he suffered from schizophrenia, or whatever doctors may call it; let it be assumed that he killed the girl on a sudden impulse; a jury of his country are satisfied that he was responsible, and it is not for this court to say that he was not."

That was exactly the position in the present case.

Taking the learned judge's summing-up as a whole, we were satisfied that he had directed the jury adequately and properly on the question of insanity. We therefore dismissed the appeal.

Appeal dismissed.

Solicitors: *Mahalingam & Poobalan.*

LETCHUMANAN v. ENG MEE YONG & ORS.

[F.C. (Gill Ag. L.P., Ong Hock Sim and Raja Azlan Shah F.JJ.) September 21, 1976]

[Kuala Lumpur — Federal Civil Court Appeal No. 158 of 1975]

Land Law — Caveat — Contract for sale of land — Termination of contract for alleged non-payment of balance of purchase price — Whether purchaser has caveatable interest — National Land Code, s. 323(1).

The respondents had entered into a contract for the sale of land to the appellant. The appellant paid the deposit and had lodged a caveat against the land. Subsequently the respondents purported to terminate the contract on the ground that the appellant had not paid the balance of the purchase price. The respondents thereupon applied to remove the caveat and this application was allowed in the High Court as the learned judge held that the appellant did not have any caveatable interest in the said land as the contract had been repudiated. The appellant appealed.

Held, allowing the appeal: (1) whether or not the agreement had been lawfully terminated could only be decided in the action which the appellant could and had in fact brought in relation to the agreement of sale and therefore it was not correct to say that the appellant had no caveatable interest in the land;

(2) repudiation by one party to the agreement cannot preclude the other party from suing on the contract.

Case referred to:-

(1) *Registrar of Titles, Johore* v. *Temenggong Securities Ltd. & Anor.* [1976] 2 M.L.J. 44.

FEDERAL COURT.

N. Ramachandran for the appellant.

Wong Soon Fok for the respondent.

Gill Ag. L.P.: This was an appeal from the judgment of Ajaib Singh J. granting an order, on the application by way of originating motion of the respondents to this appeal, for the removal of the caveat entered by the appellant against their land held under Grant No. 2457 for Lot 593 in the Mukim of Ampangan in the District of Seremban. The caveat was lodged on the basis that by an agreement in writing dated June 28, 1974 the respondents had agreed to sell the said land to the appellant.